



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 03, 2023

IN THE MATTER OF:

Appeal Board No. 628229

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 2, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings, including a remand hearing held pursuant to an order of the Appeal Board, at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed February 14, 2023 (), the Administrative Law Judge overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board.

On appeal, the employer has indicated that additional testimony and other evidence should be submitted regarding the issues because its witness was unavailable for the remand hearing due to a family medical emergency. The Board has determined to provide the employer another opportunity to submit additional testimony and other evidence. Specifically, the employer's witness should be confronted with the documentation submitted by the claimant at the remand hearing, Hearing Exhibits No. 5 and 6. Further, the claimant is directed to produce any other medical documentation or witness.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of voluntary quit and misconduct, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of voluntary quit and misconduct, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER